

106TH CONGRESS
1ST SESSION

S. 1214

To ensure the liberties of the people by promoting federalism, to protect the reserved powers of the States, to impose accountability for Federal preemption of State and local laws, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JUNE 10, 1999

Mr. THOMPSON (for himself, Mr. LEVIN, Mr. VOINOVICH, Mr. ROBB, Mr. COCHRAN, Mrs. LINCOLN, Mr. ENZI, Mr. BREAUX, Mr. ROTH, and Mr. BAYH) introduced the following bill; which was read twice and referred jointly pursuant to the order of August 4, 1977, to the Committees on the Budget and Governmental Affairs, with instructions that if one Committee reports, the other Committee have thirty days to report or be discharged

A BILL

To ensure the liberties of the people by promoting federalism, to protect the reserved powers of the States, to impose accountability for Federal preemption of State and local laws, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Federalism Account-
5 ability Act of 1999”.

1 **SEC. 2. FINDINGS.**

2 Congress finds that—

3 (1) the Constitution created a strong Federal
4 system, reserving to the States all powers not dele-
5 gated to the Federal Government;

6 (2) preemptive statutes and regulations have at
7 times been an appropriate exercise of Federal pow-
8 ers, and at other times have been an inappropriate
9 infringement on State and local government author-
10 ity;

11 (3) on numerous occasions, Congress has en-
12 acted statutes and the agencies have promulgated
13 rules that explicitly preempt State and local govern-
14 ment authority and describe the scope of the pre-
15 emption;

16 (4) in addition to statutes and rules that explic-
17 itly preempt State and local government authority,
18 many other statutes and rules that lack an explicit
19 statement by Congress or the agencies of their in-
20 tent to preempt and a clear description of the scope
21 of the preemption have been construed to preempt
22 State and local government authority;

23 (5) in the past, the lack of clear congressional
24 intent regarding preemption has resulted in too
25 much discretion for Federal agencies and uncer-
26 tainty for State and local governments, leaving the

1 presence or scope of preemption to be litigated and
2 determined by the judiciary and sometimes pro-
3 ducing results contrary to or beyond the intent of
4 Congress; and

5 (6) State and local governments are full part-
6 ners in all Federal programs administered by those
7 governments.

8 **SEC. 3. PURPOSES.**

9 The purposes of this Act are to—

10 (1) promote and preserve the integrity and ef-
11 fectiveness of our Federal system of government;

12 (2) set forth principles governing the interpre-
13 tation of congressional and agency intent regarding
14 preemption of State and local government authority
15 by Federal laws and rules;

16 (3) establish an information collection system
17 designed to monitor the incidence of Federal statu-
18 tory, regulatory, and judicial preemption; and

19 (4) recognize the partnership between the Fed-
20 eral Government and State and local governments in
21 the implementation of certain Federal programs.

22 **SEC. 4. DEFINITIONS.**

23 In this Act the definitions under section 551 of title
24 5, United States Code, shall apply and the term—

1 (1) “local government” means a county, city,
 2 town, borough, township, village, school district, spe-
 3 cial district, or other political subdivision of a State;

4 (2) “public officials” means elected State and
 5 local government officials and their representative
 6 organizations;

7 (3) “State”—

8 (A) means a State of the United States
 9 and an agency or instrumentality of a State;

10 (B) includes the District of Columbia and
 11 any territory of the United States, and an agen-
 12 cy or instrumentality of the District of Colum-
 13 bia or such territory;

14 (C) includes any tribal government and an
 15 agency or instrumentality of such government;
 16 and

17 (D) does not include a local government of
 18 a State; and

19 (4) “tribal government” means an Indian tribe
 20 as that term is defined under section 4(e) of the In-
 21 dian Self-Determination and Education Assistance
 22 Act (25 U.S.C. 450b(e)).

23 **SEC. 5. COMMITTEE OR CONFERENCE REPORTS.**

24 (a) IN GENERAL.—The report accompanying any bill
 25 or joint resolution of a public character reported from a

1 committee of the Senate or House of Representatives or
 2 from a conference between the Senate and the House of
 3 Representatives shall contain an explicit statement on the
 4 extent to which the bill or joint resolution preempts State
 5 or local government law, ordinance, or regulation and, if
 6 so, an explanation of the reasons for such preemption. In
 7 the absence of a committee or conference report, the com-
 8 mittee or conference shall report to the Senate and the
 9 House of Representatives a statement containing the in-
 10 formation described in this section before consideration of
 11 the bill, joint resolution, or conference report.

12 (b) CONTENT.—The statement under subsection (a)
 13 shall include an analysis of—

14 (1) the extent to which the bill or joint resolu-
 15 tion legislates in an area of traditional State author-
 16 ity; and

17 (2) the extent to which State or local govern-
 18 ment authority will be maintained if the bill or joint
 19 resolution is enacted by Congress.

20 **SEC. 6. RULE OF CONSTRUCTION RELATING TO PREEMP-**
 21 **TION.**

22 (a) STATUTES.—No statute enacted after the effec-
 23 tive date of this Act shall be construed to preempt, in
 24 whole or in part, any State or local government law, ordi-
 25 nance, or regulation, unless—

1 (1) the statute explicitly states that such pre-
2 emption is intended; or

3 (2) there is a direct conflict between such stat-
4 ute and a State or local law, ordinance, or regulation
5 so that the two cannot be reconciled or consistently
6 stand together.

7 (b) RULES.—No rule promulgated after the effective
8 date of this Act shall be construed to preempt, in whole
9 or in part, any State or local government law, ordinance,
10 or regulation, unless—

11 (1)(A) such preemption is authorized by the
12 statute under which the rule is promulgated; and

13 (B) the rule, in compliance with section 7, ex-
14 plicitly states that such preemption is intended; or

15 (2) there is a direct conflict between such rule
16 and a State or local law, ordinance, or regulation so
17 that the two cannot be reconciled or consistently
18 stand together.

19 (c) FAVORABLE CONSTRUCTION.—Any ambiguities
20 in this Act, or in any other law of the United States, shall
21 be construed in favor of preserving the authority of the
22 States and the people.

23 **SEC. 7. AGENCY FEDERALISM ASSESSMENTS.**

24 (a) IN GENERAL.—The head of each agency shall—

1 (1) be responsible for implementing this Act;
 2 and

3 (2) designate an officer (to be known as the
 4 federalism officer) to—

5 (A) manage the implementation of this
 6 Act; and

7 (B) serve as a liaison to State and local of-
 8 ficials and their designated representatives.

9 (b) NOTICE AND CONSULTATION WITH POTEN-
 10 Tially AFFECTED STATE AND LOCAL GOVERNMENT.—

11 Early in the process of developing a rule and before the
 12 publication of a notice of proposed rulemaking, the agency
 13 shall notify, consult with, and provide an opportunity for
 14 meaningful participation by public officials of governments
 15 that may potentially be affected by the rule for the pur-
 16 pose of identifying any preemption of State or local gov-
 17 ernment authority or other significant federalism impacts
 18 that may result from issuance of the rule. If no notice
 19 of proposed rulemaking is published, consultation shall
 20 occur sufficiently in advance of publication of an interim
 21 final rule or final rule to provide an opportunity for mean-
 22 ingful participation.

23 (c) FEDERALISM ASSESSMENTS.—

24 (1) IN GENERAL.—In addition to whatever
 25 other actions the federalism officer may take to

1 manage the implementation of this Act, such officer
2 shall identify each proposed, interim final, and final
3 rule having a federalism impact, including each rule
4 with a federalism impact identified under subsection
5 (b), that warrants the preparation of a federalism
6 assessment.

7 (2) PREPARATION.—With respect to each such
8 rule identified by the federalism officer, a federalism
9 assessment, as described in subsection (d), shall be
10 prepared and published in the Federal Register at
11 the time the proposed, interim final, and final rule
12 is published.

13 (3) CONSIDERATION OF ASSESSMENT.—The
14 agency head shall consider any such assessment in
15 all decisions involved in promulgating, implementing,
16 and interpreting the rule.

17 (4) SUBMISSION TO THE OFFICE OF MANAGE-
18 MENT AND BUDGET.—Each federalism assessment
19 shall be included in any submission made to the Of-
20 fice of Management and Budget by an agency for re-
21 view of a rule.

22 (d) CONTENTS.—Each federalism assessment shall
23 include—

24 (1) a statement on the extent to which the rule
25 preempts State or local government law, ordinance,

1 or regulation and, if so, an explanation of the rea-
2 sons for such preemption;

3 (2) an analysis of—

4 (A) the extent to which the rule regulates
5 in an area of traditional State authority; and

6 (B) the extent to which State or local au-
7 thority will be maintained if the rule takes ef-
8 fect;

9 (3) a description of the significant impacts of
10 the rule on State and local governments;

11 (4) any measures taken by the agency, includ-
12 ing the consideration of regulatory alternatives, to
13 minimize the impact on State and local governments;
14 and

15 (5) the extent of the agency's prior consultation
16 with public officials, the nature of their concerns,
17 and the extent to which those concerns have been
18 met.

19 (e) PUBLICATION.—For any applicable rule, the
20 agency shall include a summary of the federalism assess-
21 ment prepared under this section in a separately identified
22 part of the statement of basis and purpose for the rule
23 as it is to be published in the Federal Register. The sum-
24 mary shall include a list of the public officials consulted

1 and briefly describe the views of such officials and the
2 agency's response to such views.

3 **SEC. 8. PERFORMANCE MEASURES.**

4 Section 1115 of title 31, United States Code, is
5 amended by adding at the end the following:

6 “(g) The head of an agency may not include in any
7 performance plan under this section any agency activity
8 that is a State-administered Federal grant program, un-
9 less the performance measures for the activity are deter-
10 mined in cooperation with public officials as defined under
11 section 4 of the Federalism Accountability Act of 1999.”.

12 **SEC. 9. CONGRESSIONAL BUDGET OFFICE PREEMPTION**
13 **REPORT.**

14 (a) OFFICE OF MANAGEMENT AND BUDGET INFOR-
15 MATION.—Not later than the expiration of the calendar
16 year beginning after the effective date of this Act, and
17 every year thereafter, the Director of the Office of Man-
18 agement and Budget shall submit to the Director of the
19 Congressional Budget Office information describing in-
20 terim final rules and final rules issued during the pre-
21 ceding calendar year that preempt State or local govern-
22 ment authority.

23 (b) CONGRESSIONAL RESEARCH SERVICE INFORMA-
24 TION.—Not later than the expiration of the calendar year
25 beginning after the effective date of this Act, and every

1 year thereafter, the Director of the Congressional Re-
2 search Service shall submit to the Director of the Congres-
3 sional Budget Office information describing court deci-
4 sions issued during the preceding calendar year that pre-
5 empt State or local government authority.

6 (c) CONGRESSIONAL BUDGET OFFICE REPORT.—

7 (1) IN GENERAL.—After each session of Con-
8 gress, the Congressional Budget Office shall prepare
9 a report on the extent of Federal preemption of
10 State or local government authority enacted into law
11 or adopted through judicial or agency interpretation
12 of Federal statutes during the previous session of
13 Congress.

14 (2) CONTENT.—The report under paragraph
15 (1) shall contain—

16 (A) a list of Federal statutes preempting,
17 in whole or in part, State or local government
18 authority;

19 (B) a summary of legislation reported from
20 committee preempting, in whole or in part,
21 State or local government authority;

22 (C) a summary of rules of agencies pre-
23 empting, in whole or in part, State and local
24 government authority; and

1 (D) a summary of Federal court decisions
2 on preemption.

3 (3) AVAILABILITY.—The report under this sec-
4 tion shall be made available to—

5 (A) each committee of Congress;

6 (B) each Governor of a State;

7 (C) the presiding officer of each chamber
8 of the legislature of each State; and

9 (D) other public officials and the public on
10 the Internet.

11 **SEC. 10. FLEXIBILITY AND FEDERAL INTERGOVERN-**
12 **MENTAL MANDATES.**

13 (a) DEFINITION.—Section 421(5)(B) of the Congres-
14 sional Budget Act of 1974 (2 U.S.C. 658(5)(B)) is
15 amended—

16 (1) by striking “(i)(I) would” and inserting “(i)
17 would”;

18 (2) by striking “(II) would” and inserting
19 “(ii)(I) would”; and

20 (3) by striking “(ii) the” and inserting “(II)
21 the”.

22 (b) COMMITTEE REPORTS.—Section 423(d) of the
23 Congressional Budget Act of 1974 (2 U.S.C. 658b(d)) is
24 amended—

1 (1) in paragraph (1)(C) by striking “and” after
 2 the semicolon;

3 (2) in paragraph (2) by striking the period and
 4 inserting “; and”; and

5 (3) by adding at the end the following:

6 “(3) if the bill or joint resolution would make
 7 the reduction specified in section 421(5)(B)(ii)(I), a
 8 statement of how the committee specifically intends
 9 the States to implement the reduction and to what
 10 extent the legislation provides additional flexibility, if
 11 any, to offset the reduction.”.

12 (c) CONGRESSIONAL BUDGET OFFICE ESTIMATES.—
 13 Section 424(a) of the Congressional Budget Act of 1974
 14 (2 U.S.C. 658c(a)) is amended—

15 (1) by redesignating paragraph (3) as para-
 16 graph (4); and

17 (2) by inserting after paragraph (2) the fol-
 18 lowing:

19 “(3) ADDITIONAL FLEXIBILITY INFORMA-
 20 TION.—The Director shall include in the statement
 21 submitted under this subsection, in the case of legis-
 22 lation that makes changes as described in section
 23 421(5)(B)(ii)(I)—

24 “(A) if no additional flexibility is provided
 25 in the legislation, a description of whether and

1 how the States can offset the reduction under
2 existing law; or

3 “(B) if additional flexibility is provided in
4 the legislation, whether the resulting savings
5 would offset the reductions in that program as-
6 suming the States fully implement that addi-
7 tional flexibility.”.

8 **SEC. 11. EFFECTIVE DATE.**

9 This Act and the amendments made by this Act shall
10 take effect 90 days after the date of enactment of this
11 Act.

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